

ORIGINAL

RECEIVED
NOV 10 1993

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Implementation of Section 309(j)
of the Communications Act
Competitive Bidding

)
)
)
)
)

PP Docket No. 93-253

COMMENTS OF MCCAW CELLULAR COMMUNICATIONS, INC.

Scott K. Morris
Vice President - Law
McCaw Cellular Communications,
Inc.
5400 Carillon Point
Kirkland, Washington 98033
(206) 828-8420

R. Gerard Salemme
Senior Vice President -
Federal Affairs
McCaw Cellular Communications,
Inc.
1150 Connecticut Avenue, N.W.
4th Floor
Washington, D.C. 20036
(202) 223-9222

November 10, 1993

No. of Copies rec'd
List ABCDE

274

TABLE OF CONTENTS

	<u>Page</u>
I. SUMMARY	1
II. THE COMPETITIVE BIDDING PROCEDURES ADOPTED BY THE COMMISSION SHOULD PROMOTE OPEN, COMPETITIVE ENTRY BY QUALIFIED APPLICANTS	4
A. An Open, Oral Bidding Process Will Best Achieve the Commission's Competitive Policy Goals	5
B. The Inherent Unfairness and Complexity of Combinatorial Bidding Would Threaten the Integrity of the Auction Process	7
C. The Commission Must Give Careful Consideration to the Sequence in Which It Undertakes Auctions	14
D. The Competitive Bidding Payment Policies Should Promote the Rapid Deployment of Services and Full Participation by All Qualified Applicants	16
E. The Commission's Treatment of Designated Entities Must Promote Diversity and Competition in Services While Preventing Abuses of the Policy	18
F. Any Rules Adopted To Prevent Abuse of the Commission's Designated Entities Policies Should Not Be Applied to Other Winning Bidders	22
III. THE PRINCIPLES ADOPTED BY THE COMMISSION TO DETERMINE WHEN TO AWARD LICENSES BY COMPETITIVE BIDDING SHOULD ACCURATELY REFLECT CONGRESSIONAL POLICIES	22
A. McCaw Generally Concurs in the Notice's Proposed Parameters for Determining Whether a License Should Be Auctioned	24
B. Intermediate Links Should Not Be Subject to Competitive Bidding	25

IV.	THE COMMISSION SHOULD APPLY COMPETITIVE BIDDING PROCEDURES TO PRIVATE RADIO LICENSES MEETING THE STATUTORY REQUIREMENTS AND TO LICENSES FOR CELLULAR UNSERVED AREAS	29
A.	Private Radio Licenses Involving Mutual Exclusivity and For-Profit Service to Subscribers Should Be Subject to Competitive Bidding	29
B.	Auctions Should Be Applied to Cellular Service Unserved Areas Applications	30
V.	CONCLUSION	31

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED
NOV 10 1993
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Implementation of Section 309(j)) PP Docket No. 93-253
of the Communications Act)
Competitive Bidding)

To: The Commission

COMMENTS OF MCCAW CELLULAR COMMUNICATIONS, INC.

McCaw Cellular Communications, Inc. ("McCaw") hereby
submits its comments on the above-captioned Notice of
Proposed Rulemaking.¹

I. SUMMARY

McCaw concurs in the Commission's general goals of
designing a spectrum auction process that is simple, that
awards licenses to the applicants who value them the most,
and that promotes the rapid deployment of new communications
services. In particular, McCaw strongly supports the
recommendation in the Notice that licenses for personal
communications services ("PCS") be auctioned by oral bid.
Oral auctions are the best and most efficient means of
ensuring that licensed services will reach the greatest
number of Americans in the shortest period of time.

¹ Implementation of Section 309(j) of the
Communications Act Competitive Bidding, FCC 93-455 (Oct. 12,
1993) ("Notice").

McCaw does not endorse, however, the suggestion that sealed combinatorial bids be accepted in conjunction with oral auctions for individual PCS licenses. The two approaches are fundamentally inconsistent, and any effort to marry them would only undermine the fairness and vitality of the oral bidding process. Moreover, a program that attempted to mix sealed combinatorial bids with oral auctions would induce administrative burdens and legal uncertainties -- frustrating the Commission's basic desire to expedite the introduction of new wireless technologies.

McCaw therefore believes that open, oral bidding is the Commission's best choice for PCS licensing. Moreover, the company also supports the following measures for implementing a spectrum auction policy:

- The initiation of competitive bidding with narrowband PCS applications, followed by auctions for cellular unserved areas and then wideband PCS markets; this process would enable the Commission to gain valuable practical experience that it could use to refine its auction procedures and make them more effective. In wideband PCS markets, the Commission should auction one spectrum block at a time, beginning with the most heavily populated markets. The blocks allocated to Major Trading Areas ("MTAs") should be auctioned first in order to reap the advantages of those allocations at the earliest possible date.
- Adoption of bid payment procedures that promote participation in the auctions by all interested, qualified entities.
- Careful definition of designated entities, combined with adoption of clear procedures to ensure that individual applicants or consortia of applicants are not able to misuse the set-aside.

- If antispeculation and performance requirements are applied to licenses granted to designated entities in the set-aside bands, they should not be extended to the other PCS bands subject to competitive bidding, where unjust enrichment should not be a concern.

McCaw generally concurs in the proposals set forth in the Notice for determining what licenses are to be subject to competitive bidding. The proposal contained in the Notice to apply competitive bidding to point-to-point microwave links used in support of cellular system and paging operations, however, should be rejected. The likely result of the action proposed by the Commission would be to increase the incidence of mutually exclusive applications in the point-to-point microwave service and the warehousing of spectrum.

Finally, McCaw believes that competitive bidding should be applied to private radio services involving mutually exclusive applications and the provision of for-profit service to subscribers. This would include certain Specialized Mobile Radio and Private Carrier Paging services. In addition, auctions should be applied to the applications for cellular unserved areas. Such action is consistent with the Congressional statutory directive.

**II. THE COMPETITIVE BIDDING PROCEDURES ADOPTED
BY THE COMMISSION SHOULD PROMOTE OPEN,
COMPETITIVE ENTRY BY QUALIFIED APPLICANTS**

With the passage of the Budget Act, Congress amended the Communications Act of 1934 to address spectrum allocation issues. The recently enacted legislation authorizes the Commission, for the first time, to auction radio licenses. The Notice seeks comment on the most appropriate auction design and on ways to shape the Commission's competitive bidding policies to bring radio-based services to all segments of the American public as efficiently and rapidly as possible. McCaw believes that an open and informed process, designed to facilitate entry by qualified yet diverse participants, will best effectuate this goal by minimizing speculation and favoring the selection of applicants placing the highest value on spectrum.

The Notice recognizes that the Commission has no prior experience in conducting spectrum auctions and suggests that its initial foray into competitive bidding should be guided by two operational principles. First, the system must be "simple and easy to administer."² Second, the auction process must minimize the costs to applicants as well as to the Commission itself.³ McCaw concurs that the specific

² Notice at ¶ 18.

³ Id.

proposals set out in the Notice must be examined in the context of these important criteria.

The Commission's action in this proceeding is further constrained by stringent statutory deadlines. Regulations implementing the competitive bidding authority must be enacted by March 8, 1994.⁴ In addition, the Commission is required to begin issuing PCS authorizations (pursuant to a competitive bidding process) by May 7, 1994.⁵ These deadlines necessitate both quick action by the Commission and adoption of simple procedures capable of timely and fair implementation.

A. An Open, Oral Bidding Process Will Best Achieve the Commission's Competitive Policy Goals

After outlining alternative bidding methods, the Notice selects oral bidding as the Commission's basic auction method.⁶ McCaw concurs that this method best satisfies fundamental Commission criteria for a bidding system -- it "awards licenses to the eligible parties that value them the most" and "facilitates the efficient aggregation of licenses where appropriate."⁷

⁴ See id. at ¶ 1.

⁵ See id.

⁶ Id. at ¶ 46.

⁷ Id. at ¶¶ 34, 35.

In contrast to a sealed bid auction where participants may shade their bids below the maximum amount they are willing to spend in order to avoid paying more than necessary to win the license, oral sequential auctions allow each competitor to judge whether or not to continue in the auction. Thus, the party most willing to pay for the spectrum will ultimately win the license by outbidding all other participants. Such a result would serve the public interest as "the parties that value licenses the most should generally . . . make rapid and efficient use of the spectrum."⁸ Furthermore, oral sequential auctions are compatible with efficient license aggregation; any bidder that wishes to do so may combine licenses over as large or small an area as it likes, provided that it is willing to pay for that privilege by outbidding other parties.

Finally, of the bidding alternatives identified in the Notice, oral bidding is most consistent with the "guiding principles" established by the Commission. It is relatively "simple and easy to administer," thus facilitating the Commission's entry into the auction business. And, because of its simplicity, oral bidding should impose the fewest costs on both applicants and the Commission. Its fairness to participants is evident on its face. The many positive attributes of this method clearly outweigh any disadvantages.

⁸ Id. at ¶ 34.

B. The Inherent Unfairness and Complexity of Combinatorial Bidding Would Threaten the Integrity of the Auction Process

While relying primarily on oral auctions, the Commission also has tentatively proposed to implement sealed "combinatorial bidding" in certain circumstances such as PCS licensing.⁹ The Notice describes combinatorial bidding as follows:

For certain spectrum blocks we could accept bids for both licenses individually and for all the individual licenses in the block. Licenses would be awarded as a group if a bid for the licenses as a group exceeded the sum of the highest bids for the licenses individually. If the sum were greater than the highest bid for the group, licenses would be awarded individually.

In the case of PCS licensing, the Notice suggests that sealed bids for all 51 MTAs, or for various groups of Basic Trading Areas ("BTAs"), might be submitted before open bidding occurs, with the sealed bids to be opened thereafter and licenses awarded in the manner described above.

While the Notice suggests several alternatives for adding a combinatorial bid option to the basic oral auction procedure for PCS, the simple fact is that the two approaches are fundamentally incompatible. Any effort to blend the two will create complexity, legal uncertainty, and delay -- with no compensating benefits.

⁹ Id. at ¶¶ 57-62.

Perhaps the worst aspect of combinatorial bids is the adverse affect the process would have on the vitality and fairness of oral auctions. Combinatorial bids may be submitted by a few large entities or by consortia of parties whose members may be interested in only one or a few individual license areas but who are compelled to join a large bidding group in order to maximize their chances for an ultimate license award.¹⁰ Whoever the combinatorial bidders might be, it is clear that they are unlikely to participate in oral auctions for individual PCS licenses, since their efforts in those proceedings would only undermine the likelihood that their combinatorial bid would prevail.

Indeed, it is likely that combinatorial bid consortium agreements would explicitly prohibit a member from bidding at an oral auction on an individual license -- i.e., hedging the bet -- for the very reason that this would jeopardize the group's chances overall.¹¹ The consequence is that those bidders who might have been the most competitive at oral auctions will not participate. The parties who do win the oral auctions may lose the licenses they tentatively won to a

¹⁰ The equities of the process are further skewed because the Commission's eligibility rules may preclude participation in a combinatorial bid by certain parties most interested in a license.

¹¹ In this regard, combinatorial bids heighten the only potential concern that the Commission could raise regarding oral bids, namely that competitive bidding could be undermined by collusion among potential bidders.

higher combinatorial bid -- because they did not have the chance, in the open auction, to respond on a market-by-market basis to the combinatorial bidders.

Acknowledging that such a result would be unfair, the Notice suggests that a remedy might be found in permitting a final round of bidding between the winning group bid and the individual auction winners by submitting a sealed "final and best" offer. This is not an acceptable solution and is inconsistent with the Commission's basic -- and correct -- suggestion that oral auctions are superior to sealed bidding procedures.¹²

As an initial matter, the prospect of a "final and best offer" round may suppress competition in the opening rounds because participants know they will have a last chance to bid. Moreover, it offers no relief to the oral auction winners. Using a PCS MTA auction as an example, 51 unrelated bidders would be expected to organize themselves into a cohesive bidding unit to compete against a single, group winner. Each must assess how much more money it should bid on its license in order for all of the oral auction winners to surmount, as a group, the combinatorial bid. Unlike a combinatorial bidding consortium, however, the oral auction winners will have little opportunity to convene and agree on a means for sharing incremental bid amounts that must be

¹² Id. at ¶ 41.

reflected in a successful set of "final and best" offers. The individual bidders' lack of an effective mechanism for revising their bids is likely to be an insurmountable handicap in the final round. Indeed, to achieve any semblance of fairness, the Commission would have to allow individual bidders considerable time to organize themselves and develop a bidding strategy, a process that could add days or even weeks to each auction.

The Notice suggests that sealed final offers will reflect what each oral auction winner believes its license is truly worth,¹³ and it might be argued that the oral auction winners will thus be fairly treated because they will have a last opportunity to bid. This, however, is not the case. There is an obvious difference between bidding what one speculates would be a reasonable amount to win a license and raising one's bid by the amount needed to beat a competitor in an open auction. In the latter environment, a winning bidder may pay more than it might originally have concluded was a reasonable amount -- it will do so because it decides, during the course of the auction, that it will bid higher than its original ceiling simply because it cannot afford to lose the license opportunity to another party. Unfortunately, in the "final and best" offer context, the oral auction winner has no way of determining how much more

¹³ See id. at ¶ 60.

it must bid on its individual license in order not to lose that license opportunity to the combinatorial bidder.¹⁴

Another flaw in the combinatorial bidding proposal is that it undermines the Commission goal of establishing an auction process that is simple and easy to administer. Indeed, this bidding method introduces substantial complexity as well as confusion into the process. As recognized in the Notice, "[u]nnecessary complexity in conception or execution is likely to cause delay and frustrate Congress's intent to speed new services to the public."¹⁵

In establishing a combinatorial bidding system, the Commission must, for example, determine when the sealed bids for market combinations must be submitted. In the case of PCS, must all sealed combinatorial bids be submitted before any oral auctions are held, or may some licenses in a market be auctioned before sealed bids are submitted for the

¹⁴ The inappropriateness of a "final and best" bidding process for spectrum auctions is reaffirmed by an examination of certain government procurement auctions, notably within the Department of Defense, in which such a procedure is used. In these procurement auctions, the process is designed to encourage suppliers to provide a bid that is as close to cost as is economically viable given the detailed product specifications provided by the government. The Commission's avowed spectrum auction policies, as well as Congressional intent, are obviously not driven by such a goal and are not served by such a process.

¹⁵ Id. at ¶ 18.

remaining licenses in the market?¹⁶ Similarly, in a particular round, should the sealed combinatorial bids be opened before or after the oral bidding takes place? Should the "final and best offer" refinement be implemented? These questions suggest that the determinations necessary to implement competitive bidding themselves are substantially complicated; the procedures adopted also would be much more complex.

In addition, by stacking the deck against individual bidders, the combinatorial bidding proposal represents nothing more than back door national licensing of PCS. Despite specific proposals to permit national licensing, and in light of strong opposition by a number of commenters to national PCS licenses, the Commission's PCS Report and Order adopted 2 GHz PCS service areas based on Rand McNally MTAs and BTAs.¹⁷ Combinatorial bidding as set forth in the Notice suffers from the same evils as national licensing -- it sacrifices the many benefits of broader and more diverse participation, including promoting greater innovation in

¹⁶ Adoption of this latter approach clearly would advantage participants in the later bidding rounds, by providing them with important information on the auction results.

¹⁷ Amendment of the Commission's Rules To Establish Personal Communications Services, FCC 93-451 (Oct. 22, 1993) at ¶ 73 ("PCS Order"). Subject to applicable eligibility requirements, PCS licensees would be permitted to aggregate service areas. Id. at ¶ 78.

service and technology; it results in inefficient use of spectrum; and it has the potential to delay the deployment of service, particularly in rural areas.¹⁸

In establishing PCS, the Commission recognized that its action would "make available a broad range of new services and technologies to both business users and consumers."¹⁹ The Commission envisions direct benefits to users of telecommunications services as well as the economy and job market.²⁰ The complexities and problems associated with deployment of the combinatorial bidding plan likely would delay the initiation of PCS operations. The bidding for PCS authorizations using a blended oral/combinatorial bidding approach would be more time consuming than a simple oral auction, and is likely to be fraught with problems.

The effort to combine oral bids and sealed combinatorial bids is thus fundamentally unfair to oral auction participants and unduly complicated. It also raises serious legal questions. The only defense of combinatorial bidding is that it may result no greater auction revenue. The Budget

¹⁸ The Commission's PCS Order found that "a combination of MTA and BTA service areas would promote the rapid deployment and ubiquitous coverage of PCS and a variety of services and providers." Id. at ¶ 73. In addition, the Commission found that such a combination of service areas "would maximize the benefits of having both large and small service areas." Id. at ¶ 75.

¹⁹ Id. at ¶ 1.

²⁰ See id. at ¶ 2.

Act, however, requires the Commission to prescribe area designation and bandwidth assignments that promote an equitable distribution of licenses and services among geographic areas and prohibits the Commission from making its public interest determination regarding these area designations based on revenue.²¹ This provision, intended to insulate the Commission's communications policy decisions from "budgetary pressure," is implicated by the combinatorial bidding proposal and is certain to provide the basis for court challenges to license awards based upon a combinatorial bidding scheme.

**C. The Commission Must Give Careful
Consideration to the Sequence in
Which It Undertakes Auctions**

The Commission has recognized that it is about to embark on a complicated undertaking with which it has no experience.²² At the same time, Congress has directed the Commission to begin the issuance of PCS licenses by May 7, 1994.²³ McCaw believes that the Commission should proceed carefully with the initial auctions in order to gain

²¹ Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, § 6002(a), 107 Stat. 312, 389, 390 ("Budget Act").

²² See, e.g., id. at ¶ 18.

²³ Id. at ¶ 1.

important experience and insight that can be used to refine the process for subsequent rounds.

To that end, McCaw recommends that the first auctions address the applications for narrowband PCS, followed by competitive bidding for the cellular unserved areas. Proceeding in this manner will provide the Commission with practical experience holding auctions. This information in turn will assist the Commission in improving the successful operation of competitive bidding procedures as it undertakes the important licensing of broadband PCS.

In undertaking broadband PCS auctions, McCaw believes that the best approach is to conduct bidding for a single spectrum block, beginning with the most populated market and proceeding in order to the least populated market. Applying auctions in this order will allow parties desiring to establish regional systems to bid initially on the major population center (or centers) and then cluster smaller adjacent markets around an anchor market.

Consistent with the Commission's rationale underlying its PCS allocation and service area scheme, the first spectrum blocks to be auctioned should be those assigned to the MTAs (first one frequency block and then the other). To the extent the Commission is correct in its assessment that allocation of 30 MHz blocks to MTAs will promote the development of low cost PCS equipment as well as roaming and

interoperability capabilities,²⁴ then licenses for these areas should be issued first.

**D. The Competitive Bidding Payment Policies
Should Promote the Rapid Deployment of
Services and Full Participation by
All Qualified Applicants**

The Notice outlines several options for payment of the winning bid amount, but specifically proposes "to require full payment in a lump sum for all bidders other than the entities designated in the Act as deserving special consideration by the Commission to ensure their economic opportunity."²⁵ The Commission views lump sum payments as "[t]he administratively simplest option," with the additional effect of helping to deter speculative filings by entities not serious about providing service to the public.²⁶

McCaw recognizes the need for payment methods that can be readily administered by the Commission. Similarly, McCaw concurs that the bidding procedures must ensure participation by serious entities intent on providing service to the public and not merely desirous of making a quick profit on the sale of Commission licenses. Those goals, however, should not be

²⁴ See PCS Order at ¶ 76.

²⁵ Notice at ¶ 68 (footnote omitted).

²⁶ Id.

implemented at the expense of other important public policy considerations.

Consistent with the statutory directive that it "disseminat[e] licenses among a wide variety of applicants,"²⁷ the Commission also should seek to ensure that its bidding and payment procedures will encourage participation by the widest cross-section of eligible, qualified entities. This in turn will have benefits for service diversity and coverage. The policies governing minimum bid requirements, upfront payments, deposits, and payment methods therefore should all be designed to effectuate this goal, balanced with the other factors enumerated above. Application of these considerations leads to the following conclusions:

- Minimum bid amounts are unnecessary.
- Upfront payments can be constructed to evidence a potential participant's seriousness of purpose while not creating undue financial hardship preventing a qualified applicant's submission of a bid.²⁸
- The Commission should adopt payment schedules with some flexibility to accommodate the needs of a wide variety of potential licensees. Such flexibility

²⁷ Id. at ¶ 121.

²⁸ Employing a formula to calculate upfront payments based on spectrum and population is valid in the context of a defined service area licensed on a blanket basis. This approach does not work for paging applications. See discussion at pages 24-25, infra. The filing fee associated with the submission of a Form 401 for paging licensees should serve as an appropriate upfront payment.

might include an extended but reasonable period of time in which the deposit and bid balance payments could be made.

Finally, as an additional safeguard, the Commission should require bidders to disclose their ownership. This disclosure will help to ensure the legitimacy of auction participants and will discourage filings by entities seeking to pursue speculative opportunities. At the same time, this requirement should not serve to deter any other entities qualified to hold the licenses and to participate in the auction.

E. The Commission's Treatment of Designated Entities Must Promote Diversity and Competition in Services While Preventing Abuses of the Policy

In prescribing its competitive bidding rules, the Commission is required to "ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services."²⁹ To accomplish this goal, the Notice proposes to reserve two blocks of spectrum nationwide for the exclusive bidding purposes of the designated entities.³⁰ Additionally, the

²⁹ H.R. Rep. No. 213, 103d Cong., 1st Sess. 484 (1993), reprinted at 1993 U.S.C.C.A.N. 1173 ("Conference Report").

³⁰ Notice at ¶ 121.

Commission has proposed to allow the use of installment payment plans with interest for bids within the set-aside blocks.³¹

Given the significant benefits inuring from such a classification, disingenuous parties may attempt to manipulate the Commission's eligibility criteria in order to qualify for a preference. McCaw thus recommends that the Commission adopt, and strictly enforce, clear and precise definitions for designated entities. Among other standards, the Commission should ensure that the women and/or minorities responsible for an applicant being accorded designated entity treatment have actual operational control of the applicant and are not mere fronts or equity investors.

In addition, the Commission should be certain that its other definitions of designated entities are sufficiently precise to accord preferential treatment only to those bidders identified by Congress. For example, the Commission has been asked to consider a proposal to modify the definition of rural telephone companies contained in Section 63.58 of its rules to include entities serving markets of 10,000 people or less, which in turn would serve as the definition of "rural telephone company" in the competitive bidding context.³² While McCaw does not object to the

³¹ Id.

³² Notice at ¶ 77 & n.54.

proposed modification, the definition of rural telephone company needs further refinement to ensure that large, well-heeled telephone companies such as the Regional Bell Operating Companies and GTE are not converted into designated entities because they provide some service in rural areas. The Commission should specify that, to obtain a preference as a rural telephone company, the designated entity must show that in combination with its parent companies and subsidiaries it provides telephone exchange service to less than 150,000 access lines as of the date of the bid. This modification will exclude only the twenty-one largest telephone companies from designated party status while preserving a rural telephone company preference for numerous small, truly rural entities.

In addition, as the Commission suggests in the Notice, rural telephone companies should only be accorded designated party status when bidding on a license that covers a market area or reliable service area that also encompasses all or some significant portion of their franchised service area. Because the rural telephone company preference is based in large part upon Congress's desire to ensure that rural areas obtain access to new technologies, no public policy interest

would be served by extending the rural telephone companies designated party status out-of-market.³³

To the extent that a consortium seeks to bid on the blocks of spectrum reserved for designated entities, the Commission should ensure that the consortium overall as well as the individual members comply with the designated entity definitions. Consortia should not be permitted to be used as a means to evade the requirements for receipt of the benefits to be accorded designated entities.

To further foreclose the potential for abuse, the Commission must have well-known, decisive responses in the event a violation is detected. In this case, McCaw suggests that identification of sham applicants should result in immediate dismissal of their applications or revocation of their licenses.³⁴

³³ As a practical matter, many rural telephone companies may qualify for preferences out-of-market as minority-owned, women-owned, or small businesses.

³⁴ The Commission has requested comment on an innovator's bidding preference suggested by the Small Business Advisory Committee. *Id.* at ¶ 50. This preference/credit would be difficult to administer. McCaw believes that, outside the frequency blocks set aside for designated entities, no other preferences should be employed in the auction process.

**F. Any Rules Adopted To Prevent Abuse
of the Commission's Designated Entities
Policies Should Not Be Applied to Other
Winning Bidders**

In recognition of the fact that its set-aside policy may be susceptible to abuse, the Notice requests comment on appropriate safeguards to prevent unjust enrichment resulting from the trafficking of licenses awarded to designated entities.³⁵ To the extent the Commission adopts such safeguards, their application should be limited to designated entities. License winners in an unrestricted auction will have paid the maximum price, and will not be able to obtain any "unjust" enrichment; performance requirements and transfer limitations thus are not necessary.

**III. THE PRINCIPLES ADOPTED BY THE COMMISSION
TO DETERMINE WHEN TO AWARD LICENSES BY
COMPETITIVE BIDDING SHOULD ACCURATELY REFLECT
CONGRESSIONAL POLICIES**

The competitive bidding procedures authorized by Congress may be applied to "mutually exclusive applications . . . accepted for filing for any initial license or construction permit."³⁶ In addition, the statute limits the Commission's auction authority to uses of the

³⁵ Id. at ¶ 84.

³⁶ Budget Act, § 6002(a), 107 Stat. at 388. The Conference Report explains that competitive bidding would not apply to renewal or modification applications. See Conference Report at 481, 1993 U.S.C.C.A.N. at 1170.